

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:

Terry Dwayne Himes
Cheryl Ann Himes
Debtor

Case #: 13-5-3159K
Chapter 13

//

Honorable Ronald B. King

**STIPULATION REGARDING CREDITOR'S
RELEASE OF LIEN**

NOW COMES Mary K. Viegelahn, Trustee, ("Trustee") and TitleMax of Texas, Inc. dba TitleMax and for their Stipulation Regarding Creditor's Release of Lien says as follows:

WHEREAS, on November 19, 2013, Terry Dwayne and Cheryl Ann Himes ("Debtor") filed for relief under Chapter 13 of the Bankruptcy Code; and

WHEREAS, TitleMax of Texas, Inc. dba TitleMax is a creditor in this proceeding by virtue of a certain promissory note and is owed the sum of \$3,683.53 as of the Petition Date; and

WHEREAS, TitleMax of Texas, Inc. dba TitleMax asserts a security interest in a certain 2005 Infiniti G35, VIN JNKCV51E35M223766 ("Motor Vehicle"); and

WHEREAS, the Trustee filed an objection to claim #17 filed by TitleMax of Texas, Inc. dba TitleMax in the amount of \$3,683.53 asserting their lien. TitleMax of Texas, Inc. dba TitleMax failed to perfect its security interest according to applicable state law; and that the security interest may be avoided pursuant to 11 U.S.C. §544 and an Order granting the objection to claim was entered on November 24, 2014 and the claim is allowed as unsecured;

WHEREAS, pursuant to 11 U.S.C. §544(b)(1) the Trustee may avoid a lien that was not perfected pursuant to applicable state law.

- A. Texas Business and Commerce Code Title 1 Chapter 9 Section 9.311 defers to the Texas Certificate of Title Act insofar as a secured creditor must have its lien noted on the title in order to perfect.
- B. Further, and per the Texas Transportation Code Title 7, Chapter 501 – Certificate of Title Act, Section 501.021(6), a motor vehicle title issued must include the name and address of each lien holder and the date of each lien on the vehicle, listed in the chronological order in which the lien was recorded.
- C. Pursuant to the Texas Transportation Code Title 7, Chapter 501 – Certificate of Title Act, Section 501.02, not later than the fifth day after the date the department receives an application for a title and the department determines the requirements of chapter 501 have been met the title shall be issued to the first lien holder.
- D. Pursuant to the Texas Transportation Code Title 7, Chapter 501 – Certificate of Title Act, Section 501.111 a person may perfect a security interest in a motor vehicle that is the subject of a first or subsequent sale only by recording the security interest on the titled as provided by the statute.
- E. Pursuant to the Texas Transportation Code Title 7, Chapter 501 – Certificate of Title Act, Section 501.113(a), the recordation of a security interest of a lien occurs when the department's titling system is updated or the county assessor-collector accepts the application of title that discloses the lien with the filing fee.

WHEREAS, the Trustee asserts that TitleMax of Texas, Inc. dba TitleMax has failed to properly perfect a security interest in said Motor Vehicle by virtue of failing to appear on the title to the vehicle as the First Secured Party or failure to provide an application for title indicating a lien in the motor vehicle as required by State Statute and that the Trustee may avoid said lien.

WHEREAS, the parties wish to avoid any further litigation of this matter;

THEREFORE IT IS AGREED

1. That TitleMax of Texas, Inc. dba TitleMax hereby releases their lien to the Trustee, or any successor Trustee, as to the Motor Vehicle described in this Stipulation;

2. That TitleMax of Texas, Inc. dba TitleMax acknowledges that the security interest granted by the Debtor to TitleMax of Texas, Inc. dba TitleMax was not properly perfected by virtue of its failure to provide a Certificate of Title or an Application for Certificate of Title filed with the State as is required by applicable State law.

3. That pursuant to the Order on the Objection to Claim, the claim is allowed as unsecured. Any claim already on file with the Court shall be allowed only as a general, non-priority unsecured claim for the portion of the claim that applies to the Motor Vehicle described herein.

4. That in the event the case is dismissed the security interest of TitleMax of Texas, Inc. dba TitleMax shall be reinstated pursuant to applicable State law.

Wherefore, the parties hereby affix their signature below to evidence their agreement to the terms contained herein.

Date: October 16, 2015

By: Danielle Gibson
TitleMax of Texas, Inc. dba TitleMax
Danielle Gibson, Director of Bankruptcy Ops.
15 Bull Street, Suite 200
Savannah, GA. 31401
(912)525-2675

MARY K. VIEGELAHN
CHAPTER 13 TRUSTEE

By: David W. VanZyl
David W. VanZyl
Staff Attorney to Chapter 13 Trustee
dvanzyl@sach13.com
10500 Heritage Blvd. Suite 201
San Antonio, TX. 78216
(210) 824-1460 fax (210) 824-1328